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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of  
  
Policies and Rules  
concerning Toll Fraud

)  
)  
) CC Docket No. 93-292  
)

COMMENTS OF SOUTHWESTERN BELL CORPORATION

SOUTHWESTERN BELL CORPORATION

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## SUMMARY<sup>\*</sup>

SBC agrees that toll fraud, in its various forms, is a serious problem, and SBC affiliates have already taken steps to combat such fraud. For example, SWBT has announced plans to introduce a "domestic" calling card which could not be used for international calling (a prime toll fraud target). SWBT also updates its LIDB on a daily, 24 hour basis, and that data base utilizes an adjunct system designed to detect suspicious calling and billing patterns. SBC does not agree, however, with the NPRM's various proposals for "loss sharing," which would place responsibility for toll fraud on blameless parties (end users not participating in the fraud) and would remove any incentive to stop toll fraud from those parties most likely to be successful in such an effort (parties controlling the CPE/PBX equipment where the fraud occurs). Risk sharing would also constitute an unjustifiable subsidy in which parties not responsible for fraud pay the bills for those who are. Finally, risk sharing would place liability for toll fraud upon parties not in the chain of causation, a result sanctioned by no theory of law.

The NPRM's proposals to require LECs to warn PBX/CPE users of the possibility of toll fraud are misguided and inappropriate. Such notices would be extremely expensive and would serve no useful purpose. It is unnecessary to warn a consumer that a thief, if given the opportunity, will steal. No customer should install a CPE system which cannot be readily and easily controlled.

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<sup>\*</sup> All abbreviations used herein are referenced within the text.

If a customer's CPE doesn't provide adequate toll fraud prevention and detection, then the customer should either upgrade or replace that equipment.

The responsibility for toll fraud, in each instance, should be placed squarely upon the party controlling the CPE/PBX equipment through which the fraud is perpetrated.

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**COMMENTS OF SOUTHWESTERN BELL CORPORATION**

Southwestern Bell Corporation (SBC), on behalf of its subsidiaries Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Mobile Systems (SBMS), hereby files its Comments in response to the Notice of Proposed Rulemaking (NPRM) released December 2, 1993, in the captioned docket. In general, SBC concurs with the NPRM that toll fraud, in its various forms, is a serious problem, and SBC affiliates have already taken steps to combat such fraud. For example, SWBT has announced plans to introduce a "domestic" calling card which could not be used for international calling (a prime toll fraud target). SWBT also updates its LIDB on a daily, 24 hour basis, and that data base utilizes an adjunct system designed to detect suspicious calling and billing patterns.

SBC does not agree with the NPRM's various proposals for "loss sharing." These proposals are nothing more than ill-disguised subsidies to certain users of telecommunications services, users who are in the best position of all to curb toll fraud but who will have no incentive whatever, should the NPRM's proposals be adopted, to take corrective action. In an era of increasing competition, there is no justification for the creation of such subsidies.

## I. PBX FRAUD

Owners of 'CPE/PBX'<sup>1</sup> equipment have experienced unauthorized toll calling through their systems and have complained to the FCC about having to pay the subsequent charges. After recognizing that PBX fraud is indeed a problem, the NPRM tentatively concludes:

"... [T]ariff liability provisions that fail to recognize an obligation by the carrier to warn customers of risks of using carrier services are unreasonable. Moreover, we tentatively conclude that carriers have an affirmative duty to ensure that these warnings are communicated effectively to customers through for example, billing inserts, annual notices,<sup>2</sup> or other information distribution methods"

What good would such notice do? Does the record indicate a mob of PBX owners ready to tackle head-on the toll fraud problem if they only knew about it? Of course not. Notice of potential toll fraud, if required in billing inserts or some other mass mailing, would be extremely costly and about as necessary as warnings not to sunbathe on a runway.

However, manufacturers should include information on all of the features of their equipment, including security features, in the documentation provided with that equipment. If a customer is dissatisfied with CPE and/or with a warning which does or does not accompany it, the market will quickly adjust, because the customer will purchase from another supplier in the future.

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<sup>1</sup> CPE/PBX switches, as the term is used in this brief, do not include switches used by carriers, either wireless or landline, to provide their common carrier services.

<sup>2</sup> NPRM, ¶ 24.

The real issue of the NPRM is not whether end-users are aware of the toll fraud problem. They clearly are. If they were not, this NPRM would not have been released. The real issue is "whether to apportion the cost of CPE-based fraud."<sup>3</sup> SBC strongly opposes any such apportionment.

Customer owners of CPE/PBX, including Central Office based PBX surrogates, should be wholly responsible for all toll and other fraud perpetrated through such equipment. These customers alone control the use of their equipment. These customers alone can distinguish fraudulent from appropriate use. To suggest that Local Exchange Carriers (LECs) such as SWBT, because their networks are used when PBX toll fraud is perpetrated, should therefore bear some proportionate share of the liability, is like suggesting that a state highway department, because its network is used when a car is stolen, should therefore bear some proportionate share of auto theft liability. Although the law does recognize, in certain instances, liability without fault, no doctrine of the law recognizes liability without legal causation. In the words of Lord Bacon: "It were infinite for the law to judge the cause of causes and their impulsions one of another, therefore it contented itself with the immediate cause, and judged of acts by that without looking to any further degree."<sup>4</sup> Responsibility for toll fraud should be placed upon the party(ies) who can stop the fraud, not upon parties only tangentially involved.

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<sup>3</sup> Id., ¶ 25.

<sup>4</sup> Bacon, Maxims, reg. 1.

Requiring LECs to shoulder part of the toll fraud load would, of course, mean that the cost would ultimately be passed through to end-users. Thus, end-users taking steps to avoid toll fraud would be subsidizing end-users taking no steps at all. There is no justification for such a policy; indeed, the NPRM advances none.

The NPRM asks whether LECs should be required "to offer customers protection through monitoring services."<sup>5</sup> The NPRM does not describe, however, the nature of such services, nor does it describe how monitoring of any sort by LECs would aid in the prevention of toll fraud. At a minimum, such monitoring (and notification) would require additional LEC network facilities and personnel. If the cost were paid by the cost-causers--i.e., the PBX owners employing the system--SBC would have no objections, provided full cost recovery were allowed. It is, however, highly unlikely that unusual calling patterns would be detected (assuming that "unusual" has any meaning in this context, which SBC doubts). The monitoring would thus be for naught. If, on the other hand, the cost were to be spread among all end-users, SBC would object to the proposal, because one segment of the end-user community (those suffering little or no toll fraud, because they are controlling it) would be subsidizing another segment (those suffering much fraud, because they are not controlling it), without regard for equity or efficacy.

No customer should install a CPE system which cannot be readily and easily controlled. If a customer's CPE doesn't provide

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<sup>5</sup> NPRM, ¶ 26.



adequate toll fraud prevention and detection, then the customer should either upgrade or replace the equipment. This is not to say that law enforcement officials, regulatory agencies and legislatures cannot help by providing more stringent enforcement of laws, "stiffer" prosecution, and enactment of new and stronger laws and regulations. Equipment vendors, however, already make available security features which make fraudulent use difficult or impossible. A "loss sharing" mechanism, as contemplated by the NPRM, will merely dilute the economic incentive necessary for end-users to purchase such devices.

The only liability apportionment which might be considered for LECs would involve fraud occurring within or upon CPE/PBX equipment controlled by LECs. This is the only area in which LECs have any ability at all to effect fraud. The matter will be significantly complicated by expanded interconnection, which will make it extremely difficult to determine who should bear an "allocated" cost. If the allocation is to apply to all entities transporting any portion of a call, the complexity of the issue grows exponentially. For example, in the not-too-distant future, one carrier may provide the facility between the PBX customer's premises and a central office, another carrier the facility between that central office and another office, and a third carrier the facility between that other central office and customer premises at that end. Each carrier, in such a scenario, can and should be responsible only for fraud occurring within or upon its own CPE/PBX equipment. Carriers should not be held responsible for events occurring on other CPE/PBX equipment--over which the carriers have

no control whatever. Instead, the end-user should be required to select service providers with diligence. An apportionment of liability will, to put it mildly, not encourage such diligence on the part of end-users.

Responsibility for losses resulting from fraudulent PBX use must rest upon the party employing the PBX system, the party with the ability to control such use, and not upon the carrier. Market forces will stimulate the purchase of features and services to assist this process. Enforcement of existing laws, and the enactment of new laws with stiffer penalties (including monetary forfeitures payable to the fraud victim) will also play a role. This approach will provide the best method to combat and prevent this type of fraud, because it will encourage victims to identify and prosecute offenders to obtain restitution.

## II. PAYPHONE FRAUD

The NPRM refers to a request by the Florida Public Service Commission for implementation of federal regulations mirroring recently adopted Florida regulations.<sup>6</sup> The Florida regulations, which became effective February 3, 1993, release a pay telephone provider from liability for charges resulting from certain types of fraudulent calls if the provider purchases Originating Line Screening (OLS) and/or Billed Number Screening (BNS) services from a LEC. The Florida rules also require that losses from payphone fraud be allocated solely between LECs and

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<sup>6</sup> Id., ¶ 27.

Interexchange Carriers (IXCs) based on fault.<sup>7</sup> The NPRM tentatively concludes that "payphone providers that take reasonable steps to limit their exposure to toll fraud and are not customers should not be required to pay bills generated as a result of toll fraud perpetrated through their equipment."<sup>8</sup>

The NPRM's implication is that subscription to OLS and/or BLS constitutes a "reasonable" step to limit toll fraud. Such conclusion, however, is totally unwarranted. SWBT billing and screening services are neither designed nor priced to prevent toll fraud or guarantee revenue collection. Their primary purpose is to assist SWBT's IXC customers in deciding whether to extend credit, and what type of credit, to callers. While SWBT maintains a high level of accuracy for its billing and screening services, these procedures cannot determine if a caller is the authorized user of a valid calling card. Neither SWBT nor anyone else has any way of determining at the time a call is placed if the caller is the person to whom a particular card was issued. Even if the caller is the authorized holder of the card, neither SWBT nor anyone else can guarantee that the holder will pay for the call. Moreover, when SWBT makes available billing and screening information, SWBT cannot guarantee that service providers will correctly apply the information, if they choose to use it. Service providers have sometimes ignored the information made available by SWBT and processed calls that should have been denied. Such conduct

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<sup>7</sup> Florida Administrative Code, Rules 25-4.076, 25-24.475, and 25-24.515. Order No. PSC-93-FOF-TP.

<sup>8</sup> NPRM, ¶ 31.

underscores the need for each transport provider to be responsible for fraud resulting from use of its network.

In response to the needs of its end-user and IXC customers, SWBT announced plans in 1993 to implement a "domestic" calling card designed to be used as a billing mechanism for calls made to points only within the United States and Canada. The intent, obviously, was to decrease international toll fraud. SWBT has been forced to delay implementation of this product, however, because of the unwillingness or inability of IXCs to pass the called number in the query message and correctly process the associated response message. SWBT should not be held responsible in any way for toll fraud occurring with the usage of IXC networks, whether involving payphones or otherwise, when IXCs are unwilling to take cooperative steps designed to control such fraud.

Also, a federal rule requiring liability for payphone fraud to be apportioned between IXCs and LECs based on fault would be a short fuse to a litigation explosion, the fallout of which would land squarely upon the Commission. How would the rule work in the vast majority of cases in which neither LEC nor IXC is at fault? Who would pay then? If SWBT OLS and BNS services are to be insurance policies for payphone providers, as the NPRM suggests, then rates for these services must be raised drastically to cover the risk involved and must be borne exclusively by the payphone providers themselves.

### III. CELLULAR FRAUD

As in the case of land-line toll fraud, SBC opposes any apportioning of liability for toll fraud associated with cellular service. Regulatory initiatives should be directed toward identifying how fraud occurs and attempting to control or prevent its occurrence. Apportionment of liability is best left to the industry and contract law, particularly for equal-access providers like SBMS. SBC does support enactment of specific criminal legislation targeting cellular fraud and encourages the Commission to support such legislation.

SBC also supports strengthening the Commission's existing rules relating to the alterability of ESNs (Electronic Serial Numbers) in cellular CPE. Companies today openly specialize in tampering with the software in cellular CPE to allow two or more units to operate with the same functional ESNs. These companies claim not to be in violation of existing Commission regulations, because--they claim--they are not "altering" the original ESN in the unit. They are instead causing the unit to look elsewhere on the chip for a second ESN which they install, and the unit broadcasts that second ESN rather than the original ESN installed in the phone. Although SBC disagrees that these companies are not already in violation of existing regulations relating to tampering or altering ESNs, SBC supports amendment of the Commission's rules to prohibit an unauthorized alteration of a cellular CPE unit causing it to broadcast any ESN other than the one originally installed.

Commission rules should also make clear that manufacturers, cellular carriers and their authorized personnel can lawfully alter ESNs to facilitate replacement of CPE, provided that after an ESN is transferred to a new phone, it is erased from the original unit so that only one unit can broadcast that unique ESN.

The NPRM inquires whether the cellular industry has "adequate incentives" to prevent fraud and whether a "shared liability" theory for combatting cellular fraud is appropriate.<sup>9</sup> Whether a fraudulently placed call is local, intraLATA or interLATA, a cellular carrier bears the loss for airtime and for access charges (in certain instances). Thus, the cellular carrier has a strong incentive to prevent fraud, even though an IXC may incur a loss on the toll portion of a call. The cellular industry is thus constantly working on fraud prevention measures. Many, including SBMS, have moved toward pre-call validation on their networks, which, as the NPRM notes,<sup>10</sup> has been most effective in eliminating the "tumbling" variety of cellular access fraud.

Any sort of "loss sharing" mechanism, in which cellular carriers bear a portion of toll fraud loss occurring on IXC networks, would be nothing more than a subsidy which cellular carriers would be forced to pass through to their customers. Thus cellular customers would end up subsidizing landline IXCs such as AT&T and MCI. The NPRM suggests no justification for such a subsidy, and proposals along this line should be summarily rejected.

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<sup>9</sup> Id., ¶ 34.

<sup>10</sup> Id., ¶ 33.

#### IV. LINE INFORMATION DATA BASE FRAUD

SBC is extremely concerned that the Commission is considering "liability allocation" involving LIDB (Line Information Data Base) owners when calling cards are fraudulently used to bill toll calls.<sup>11</sup> SWBT updates its LIDB information daily and also on an emergency basis if calling card fraud is suspected. SWBT also provides an 800 number--available 24 hours a day, 7 days a week--to end users and IXC's for reporting compromised calling cards and suspected toll fraud. SWBT's validation service also utilizes an adjunct fraud system designed to detect suspicious calling and billing activities. LIDB, however, is not an insurance policy. It was not designed to and cannot, in fact, prevent fraud. LIDB seeks to determine, for example, whether calling cards are valid--i.e., whether card holders have paid their bills, whether valid PINs are being used, and whether any geographic restrictions may apply. At best, LIDB seeks to detect fraud and control additional fraudulent activity. LIDB has no way of knowing whether card holders will pay their bills in the future. Nor can LIDB determine whether the person seeking to use a card for a specific call is in fact the authorized card holder.

SWBT's efforts to detect and control fraud would be greatly enhanced if all LIDB customers validated each call and provided calling and called number information, as specified in SWBT's LIDB validation service tariffs. Otherwise, service features and improved controls cannot be effectively implemented. LIDB providers should not be required to pay validation service

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<sup>11</sup> Id., ¶ 39.

customers for inclusion of this information in their queries. There is no "cost" to validation service customers to provide this data. The intent of SWBT in requesting this information is to help reduce fraud for its LIDB customers. SWBT should therefore not be required to pay for data from LIDB customers when the application of that data is designed to control losses for those same customers. A requirement for SWBT to pay for such information would only serve to raise the price of SWBT's validation service.

Proposals for LIDB owners to bear some of the liability for unauthorized card use are nothing more than attempts to shift some of the burden to parties who are in no position to stop the fraud. If LIDB is to function as an insurer, then rates must be raised enormously. As with the other risk-sharing proposals in the NPRM, the ultimate burden would thus rest on blameless end-user customers. Such a result is completely unjustifiable.

#### V. CONCLUSION

The NPRM's various proposals for risk-sharing would place responsibility for toll fraud on blameless parties (end users not participating in the fraud) and would remove incentive to stop toll fraud from those parties most likely to be successful in such an effort (parties controlling the CPE/PBX equipment where the fraud occurs). Risk-sharing would also constitute an unjustifiable subsidy in which parties not responsible for fraud pay the bills for those who are. The NPRM suggests no justification whatever for this Through the Looking Glass approach, other than, perhaps, the Queen's response to the assertion by Alice that "one can't believe




impossible things." "I daresay you haven't had much practice," the Queen replied. "When I was your age, I always did it for half an hour a day. Why, sometimes, I've believed as many as six impossible things before breakfast."

Carriers can participate in industry-wide committees which share information on toll fraud and coordinate industry responses. But carriers are neither watchdogs nor insurers. The responsibility for toll fraud, in each instance, should be placed squarely upon the party controlling the CPE/PBX equipment through which the fraud is perpetrated, and upon no one else.

Respectfully submitted,

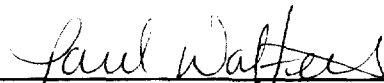
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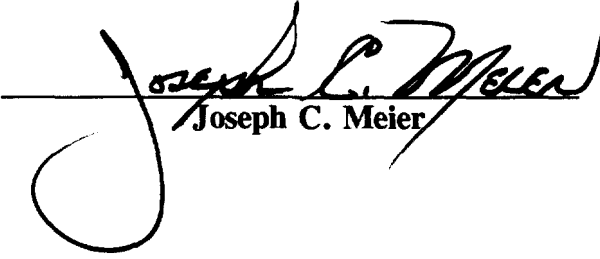
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January 14, 1994

**CERTIFICATE OF SERVICE**

I, Joseph Meier, hereby certify that the foregoing  
"Comments Of Southwestern Bell Telephone Company", in CC  
Docket No. 93-292, has been served this 14th day of January,  
1994, to the Parties of Record.

  
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